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DIRECT TAXES

GROUP TAX CONSOLIDATION SCHEME: TRANSFER AND OFFSETTING OF VAT CREDIT

Quarterly VAT credits of a consolidated company may not be transferred to the VAT group. However, only VAT credit surplus from the annual VAT return may be transferred to the group tax consolidation and offset against the corporate tax IRES (Italian tax authority, response to request for binding information no. 180 of 12 September 2024).

PENALTIES

If a company is dissolved as a result of its cancellation from the companies' register, the shareholders are liable for the penalty fees pursuant to section 2495 of Italian Civil Code (judgement of the Court of Cassation no. 21177 of 27 July 2024).

DIRECTORS' FEES

Costs for consultancy services provided to the company by a member of the Board of Directors are not deductible if they do not fulfil the conditions set out in section 2389 (1) and section 2364 (1) (3) of the Italian Civil Code and thus they do not result from the articles of association or an express resolution of the shareholders' meeting.

This applies regardless of the fact that the consultancy agreement has a 'clear subject matter', 'in accordance with the company's needs' and a 'precise pricing' (judgment of the Court of Cassation no. 20613 of 24 July 2024).

VAT

VAT CREDIT NOTES

If a company that has issued an invoice is dissolved and deleted from the companies' register, the right to issue a VAT credit note cannot be exercised by the shareholders (Italian tax authority, decision no. 47 of 19 September 2024).

DEDUCTION

VATable persons providing goods free of charge to a subcontractor to carry out work for the VATable person are entitled to deduct the VAT paid on the acquisition of the goods, provided that:

- the provision of the goods does not exceed the extent necessary for the VATable person to carry out transactions subject to VAT or to carry out the business activity, and
- the acquisition cost of the goods is deemed to be an integral part of the price of the transactions carried out by the VATable person or of the goods or services supplied by the VATable person in the course of the business (ECJ, Case C-475/23 of 4 October 2024).

PERMANENT ESTABLISHMENT

The deduction of input VAT cannot be denied to a VATable person on the ground that there is no separate bookkeeping for the permanent establishment, if the substantive conditions for the right of deduction are

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fulfilled (ECJ, Case C-475/23 of 04 October 2024).

SEPARATION OF BUSINESS ACTIVITIES

Business activities may be separated if the respective business activities, which are carried out systematically and not only occasionally, are significantly different from each other and are actually separable according to objective criteria, so that they can each form the purpose of a business activity, each with its own organisational structure (judgment of the Court of Cassation No. 24022 of 6 September 2024).

REGULARISATION OF INVOICES

The obligation provided for in section 6(8) of Italian Legislative Decree no. 471/1997 to correct invoices on the part of the buyer of goods or the client of a service obliges the buyer/client to check the formal correctness of the invoice. However, the buyer/client is not obliged to make enquiries in this regard in order to determine the correct applicable regulation, 'because this would result in individuals carrying out investigation and assessment tasks that are normally the responsibility of the administration' (judgment of the Court of Cassation no. 24133 of 9 September 2024).

REGISTRATION FEES

PENALTY PAYMENT PROVISION

When registering a lease agreement that contains a penalty clause, the taxation of the provision giving rise to the higher tax burden is applied, i.e. either the provision relating to the contract or that relating to the penalty clause (Italian tax authority, response to request for binding information no. 185 as of 18 September 2024).

MENTION

A contract for an interest-free loan that is mentioned in an annex to an expert opinion, which in turn is attached to a deed submitted for registration, is subject to the pro rata registration fee. An interest-bearing loan agreement, on the other hand, is not subject to the pro rata registration fee, as it is a transaction subject to VAT, even if it is exempt from VAT (judgment of the Court of Cassation no. 22997 of 21 August 2024).

IMU (Municipal Property Tax)

DETERMINATION OF CADASTRAL INCOME

For the purposes of Municipal Property Tax (IMU), installations that are part of the electricity transmission and distribution network and are firmly connected to the associated land or the main structure are considered an integral part of the transformer station of the operator of the electricity supply service, as they are closely linked to the production process, and increase the cadastral income of the transformer station (Judgment of the Court of Cassation no. 22582 of 09 August 2024).

Yours sincerely

HAGER & PARTNERS